PATENT COOPERATION TREATY

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INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY
(Chapter I of the Patent Cooperation Treaty)

(PCT Rule 44*bis*)

Applicant's or agent's file reference 891-A-PCT	FOR FURTHER ACTION	See item 4 below
International application No. PCT/US2005/010152	International filing date *(day/month/year)* 25 March 2005 (25.03.2005)	Priority date *(day/month/year)* 26 March 2004 (26.03.2004)
International Patent Classification (8th edition unless older edition indicated) See relevant information in Form PCT/ISA/237		
Applicant VION PHARMACEUTICALS, INC.		

1. This international preliminary report on patentability (Chapter I) is issued by the International Bureau on behalf of the International Searching Authority under Rule 44 *bis*.1(a).

2. This REPORT consists of a total of 4 sheets, including this cover sheet.

   In the attached sheets, any reference to the written opinion of the International Searching Authority should be read as a reference to the international preliminary report on patentability (Chapter I) instead.

3. This report contains indications relating to the following items:

☒	Box No. I	Basis of the report
☐	Box No. II	Priority
☐	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
☐	Box No. IV	Lack of unity of invention
☒	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
☐	Box No. VI	Certain documents cited
☐	Box No. VII	Certain defects in the international application
☐	Box No. VIII	Certain observations on the international application

4. The International Bureau will communicate this report to designated Offices in accordance with Rules 44*bis*.3(c) and 93*bis*.1 but not, except where the applicant makes an express request under Article 23(2), before the expiration of 30 months from the priority date (Rule 44*bis* .2).

	Date of issuance of this report 26 September 2006 (26.09.2006)
The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland Facsimile No. +41 22 338 82 70	Authorized officer Masashi Honda e-mail: pt08@wipo.int

Form PCT/IB/373 (January 2004)

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:
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141-07 20TH AVENUE
WHITESTONE, NY 11357

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WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43*bis*.1)

Applicant's or agent's file reference 891-A-PCT	Date of mailing (*day/month/year*) 21 MAR 2006 FOR FURTHER ACTION See paragraph 2 below

International application No.	International filing date (*day/month/year*)	Priority date (*day/month/year*)
PCT/US05/10152	25 March 2005 (25.03.2005)	26 March 2004 (26.03.2004)

International Patent Classification (IPC) or both national classification and IPC

IPC(7): A61K 38/00,04 and US Cl.: 514/12,13,14,15,16,17,18,19; 530/324,325,326,327,330

Applicant

VION PHARMACEUTICALS, INC.

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43*bis*.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1*bis*(*b*) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/ US	Date of completion of this opinion	Authorized officer
Mail Stop PCT, Attn: ISA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (571) 273-3201	30 October 2005 (30.10.2005)	Howard V. Owens Telephone No. 7033081235

Form PCT/ISA/237 (cover sheet) (April 2005)

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

International application No.
PCT/US05/10152

Box No. I Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of:
   - ☒ the international application in the language in which it was filed
   - ☐ a translation of the international application into _____, which is the language of a translation furnished for the purposes of international search (Rules 12.3(a) and 23.1(b)).

2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

   a. type of material
      - ☐ a sequence listing
      - ☐ table(s) related to the sequence listing

   b. format of material
      - ☐ on paper
      - ☐ in electronic form

   c. time of filing/furnishing
      - ☐ contained in the international application as filed.
      - ☐ filed together with the international application in electronic form.
      - ☐ furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

International application No.
PCT/US05/10152

Box No. V Reasoned statement under Rule 43 *bis*.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims 1-18	YES
	Claims NONE	NO
Inventive step (IS)	Claims None	YES
	Claims 1-18	NO
Industrial applicability (IA)	Claims 1-18	YES
	Claims NONE	NO

2. Citations and explanations:

Claims 1-18 lack an inventive step under PCT Article 33(3) as being obvious over Lee et al., International Journal of Toxicology, Vol. 21(1), pp. 23-28, 2002.

Claims 1-18 are drawn to the combination of VNP40101M and a nucleoside compound.

Lee teaches that VNP40101M is an antitumor agent. Lee however does not suggest the use of nucleoside compounds in combination with VNP40101M to treat a tumor; however, applicant has chosen nucleoside compounds which are known in the art in the treatment of cancer; therefore, the combination of two compounds known in the art to have the abilitity to independently treat the same condition or disease would be obvious.

It would have been *prima facie* obvious to combine a nucleoside compound known for treating tumors and the antitumor compound VNP40101M.

One of skill in the art would have been motivated to combine a nucleoside compound known for treating tumors and the antitumor compound VNP40101M because these compounds had shown individual efficacy in the treatment of tumors as well as provide a lower dosage profile by the administration of two active ingredients.

Claims 1-18 meet the criteria set out in PCT Article 33(4), and thus have industrial applicability because the subject matter claimed can be made or used in industry.